

EXHIBIT B

IN RE:

THE FEDERAL RICO ACT & THE INJURED WORKER

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ORIGINAL

1 - - -
2 SAM GOLD: Good evening, America.

3 I am Sam Gold. In our quest to bring you the latest
4 news of interest to America's injured workers, we bring
5 you the story behind the story. Not just old news off
6 WorkCompCentral.com, like the others do.

7 A story that has been in the news of
8 recent has unusual ramifications, if successful in the
9 courts. It's a topic that we have been proselytizing
10 about for the last five years. The use of the Federal
11 Racketeer Influence and Corrupt Organizations Act, also
12 known as RICO, to hold employers, insurers and their
13 "Doc in the Box" physicians accountable for their
14 fraudulent acts that they perpetrate in the workers'
15 compensation process.

16 A Federal Appeals Court has cleared
17 the way for discovery to begin in a RICO lawsuit that
18 accuses insurance administrator Crawford & Company, and
19 an Illinois trucking business of colluding with a
20 Michigan doctor to falsely deny workers workers --
21 their workers' compensation claims.

22 After being ordered by the U.S.
23 Supreme Court to reconsider an earlier decision, the
24 U.S. 6th Circuit Court in Michigan reversed a District
25 Court's decision to dismiss a civil complaint under the

1 RICO law filed by six current and former employees of
2 Cassens Transport Company, Crawford and Company and
3 physician Dr. Saul Margules.

4 In the conclusion of its 13-page
5 opinion, the appeals court said that it reversed the
6 dismissal of plaintiff's RICO claims because their RICO
7 claims are not preempted by State law and because
8 plaintiff's have adequately pleaded a pattern of
9 racketeering activity, despite the lack of reliance on
10 the defendants fraudulent acts and remanded to the
11 district court for further proceedings consistent with
12 this opinion.

13 The Court affirmed the dismissal of
14 the intentional infliction of emotional distress claims
15 because the defendants alleged actions cannot meet
16 Michigan standard for outrageous conduct. The appeals
17 court reported in June 2004 the plaintiffs filed a
18 complaint raising RICO an intentional infliction of
19 emotional distress claims against the defendants. The
20 plaintiffs alleged that Cassens, which was self-insured
21 for the workers' compensation had contracted with
22 Crawford to serve as a claims adjuster. They further
23 pleaded that Cassens, Crawford and Margules, as well as
24 other cutoff doctors, engaged in a pattern of
25 racketeering activity that denied the plaintiff's

1 workers' compensation claims. The Court wrote
2 specifically the plaintiffs alleged that Cassens and
3 Crawford deliberately selected and paid unqualified
4 doctors, including Margules to give fraudulent medical
5 opinions that would support the denial of workers'
6 compensation benefits, and that defendants ignored
7 other medical evidence in denying them benefits.

8 The plaintiffs also claim that the
9 defendants made fraudulent communications amongst
10 themselves and to the plaintiffs by mail and wire,
11 bringing them under the jurisdiction of the RICO
12 Statutes, the Court wrote.

13 As you are probably aware, the
14 Federal RICO Statutes were designed to bring organized
15 crime activities to justice in the past. The workers'
16 lawyer, Marshall Lasser of Southfield, Michigan said
17 his RICO action represents a new strategy in his state
18 to make employers and insurers accountable for their
19 fraudulent practices. No recourse seems to be
20 available in state workers' compensation systems
21 anywhere, Lasser said.

22 With us tonight by telephone is
23 Michigan attorney, Marshall Lasser, to fill us in on
24 the details of this most unusual lawsuit that might
25 just open the flood gates for America's attorneys to

1 finally get justice for their injured worker clients.

2 And conducting the interview tonight is our special

3 guest attorney, Sam Lasser, who is a California

4 criminal defense attorney.

5 SAMUEL LASSER: Good evening,

6 Folks. My name is Samuel Lasser, I am an attorney here

7 in San Francisco and I practice mostly criminal defense

8 work, and I am here today. Via telephone is Marshall

9 Lasser, an attorney from Michigan.

10 And, Marshall, we are very glad to

11 have you here on the show.

12 He is going to talk to us today

13 about his legal efforts to pursue justice on behalf of

14 injured workers in Michigan against insurance companies

15 who are fraudulently denying these injured workers

16 benefits.

17 Good evening, Mr. Lasser.

18 MARSHALL LASSER: Good evening.

19 SAMUEL LASSER: Thank you, again,

20 for being on the show.

21 I want to just get a little

22 background information about yourself and where you

23 are, who you are, and what you do, and how you have

24 gotten to this point. Why don't you tell us what your

25 law practice is, how long you have been practicing law,

1 and what does your practice entails.

2 MARSHALL LASSER: I graduated from
3 Harvard Law School in 1973. In fact, I did work in San
4 Francisco for a couple of years.

5 After that, I moved back to
6 Michigan, and I worked several years for Ford Motor
7 Company in the office as general counsel where we
8 defended product liability cases. Then in the late
9 1970's I went out on my own, primarily representing
10 teamsters, and building tradesmen in workers'
11 compensation and product liability and general
12 negligence claims such as falls (phonetic) auto
13 accidents. In the last -- I would say in the last
14 30 years that is what I have done, pretty much
15 exclusively. Recently, due to the changes of law in
16 Michigan, it has been more workers' compensation than
17 personal injury, third-party cases.

18 SAMUEL LASSER: So for the past
19 30 years or so years, you have handled primarily -- or
20 exclusively, plaintiff side, personal injury and
21 workers' compensation cases?

22 MARSHALL LASSER: Yes, that's
23 correct. I work only on the plaintiff's side.

24 SAMUEL LASSER: And, through your
25 years of practice -- I just want to get a lead into

1 where we are and what we are talking about today in the
2 RICO lawsuit.

3 But through your years of working in
4 the workers comp system you have, obviously, seen a
5 tremendous amount -- or you have seen a great deal, and
6 you understand how the system operates, and could you
7 explain to us a little, what is it about the system,
8 the Workers Compensation system that has frustrated you
9 the most throughout your years of practice?

10 MARSHALL LASSER: Good question,
11 Sam.

12 I became really, really upset and
13 disgusted with the way the insurance companies cut
14 people off or deny benefits unconscionably, and I
15 believe, and this is what I am hoping to prove in my
16 RICO cases fraudulently.

17 Injured workers don't have a
18 \$100,000 or \$200,000 cushion in case they are injured
19 on the job. They live close to the edge financially,
20 most of them, and they desperately need their workers
21 comp in order to pay their rent or mortgage, to keep
22 their spouses from leaving, to buy food and, of course,
23 to pay for their injuries -- for medical care for their
24 injuries.

25 About 10, 12 years ago I became

1 disgusted by two different elements, two different
2 things from the workers compensation system. In
3 Michigan there is no punishment for workers'
4 compensation insurers, or the so-called IME,
5 Independent Medical Exam doctors they use. If the
6 insurers, with the doctor, lie or commit fraud, there
7 simply is no punishment; they get away with it.

8 So what I believe this has
9 encouraged and fostered is two types of bad things.
10 The first thing is the insurance company claim adjuster
11 cutting off benefits or denying benefits right from the
12 start using fraudulent reasons. In Michigan they have
13 to file with the State of Michigan a document called a
14 Notice of Dispute. They have to file that with what is
15 now called the Workers' Compensation Agency. And in
16 the Notice of Dispute they have to state the reasons
17 why they are denying benefits and the reason can be
18 just complete bologna, complete bologna. There is no
19 punishment for it, and that really enraged me, really
20 bittered me to see people hurting so badly by what I
21 thought was bold faced lying in a lot of cases.

22 And then the other problem, which is
23 even bigger, probably, is the use of so-called IME,
24 Independent Medical Exam doctors, to wrongfully, in my
25 opinion, wrongfully and even fraudulently deny workers

1 comp right from the start, or to cut them off after a
2 person has been on workers comp after a period of time.
3 Those are the two problems that really got me going.

4 SAMUEL LASSER: Now are these
5 problems that you are talking about, are these
6 something -- are these problems that have arisen in the
7 past five or ten years, or are these problems that you
8 saw from the outset of, you know, your practice, in
9 your beginning of practice?

10 MARSHALL LASSER: I remember I
11 really got into workers comp in a heavy way in the
12 early and mid-eighties. And I do -- I remember
13 distinctly a deposition that I took in 1993 in Flint,
14 Michigan of an orthopedic surgeon, or neurosurgeon, by
15 the name of Melvyn Wolf, and he admitted on the record
16 that in his -- he does IME's for insurance companies,
17 self-insured employers, General Motors, for example, is
18 a large self-insured employer, and he was grossing
19 \$750,000 a year; this was back in 1993. And it doesn't
20 take much to realize that there is very little overhead
21 for that type of business. You need a secretary, maybe
22 you need an X-ray technician to take X ray, and you
23 don't have to pay medical malpractice premiums for that
24 because in Michigan, no matter what you say in your IME
25 report, you can't be sued. So I was just stunned that

1 this doctor could make this kind of money, gross
2 \$750,000, maybe netting \$650,000, \$675,000 back in
3 1993, from turning out thousands of these reports for
4 insurance companies to defendants. That is when I
5 really first saw the problem, but I didn't see RICO as
6 the possible tool until much later.

7 SAMUEL LASSER: So as you said, it's
8 the unavailability of any remedy under State law, under
9 Michigan Law, for these injured workers who are being
10 fraudulently -- or who are fraudulently denied
11 benefits. They really have no recourse under the State
12 law. So where do you go from there, and how did you
13 find RICO as the avenue to pursue these claims?

14 MARSHALL LASSER: Today is 2008, so
15 it was somewhere around 2002, 2003, that -- and I am
16 not sure how it was that I thought of RICO as being an
17 avenue for what I believe is the fraudulent denial of
18 workers comp, but it was about that time, 2002 -
19 2003 that I brought -- 2003 was when I brought my first
20 case. I am not sure how I realized I put two and two
21 together that this was the -- that this presented an
22 avenue. But it was about 2003 that, I believe it was,
23 when I brought my first case that preceded, you know,
24 the one that finally won.

25 SAMUEL LASSER: Can you explain a

1 little bit as to why RICO, the Racketeering Influence
2 Corrupt Organization Law, why you selected that law to
3 go after the insurance companies -- and employers?

4 MARSHALL LASSER: No, RICO -- there
5 is a lot of reasons.

6 You know, one of which that it
7 provides for trouble damages, it provides for attorney
8 fees. It allows you to sue the people who commit the
9 racketeering acts, possibly the doctors, possibly the
10 claims adjusters, the companies that employ these
11 people. It allows tremendous discovery -- very, very
12 wide open discovery. I can -- a person can discover
13 not just -- about the discovery -- not just about the
14 acts that he has pled in his complaint but he can
15 discover all similar acts.

16 SAMUEL LASSER: But before -- I will
17 get into the discovery aspect of it later.

18 How did you -- what proceedings did
19 you initiate back in 2003 or 2004? How did you get the
20 ball rolling on this -- on these claims?

21 MARSHALL LASSER: The first case I
22 filed was on behalf of a single individual who was, I
23 believe, defrauded by an IME doctor and a claim
24 adjuster.

25 That case was quickly thrown out of

1 the district court on the Rule 12(b)6, Federal District
2 Court rule 12(b)6.

3 SAMUEL LASSER: Basically, can you
4 explain what that means in common terms?

5 MARSHALL LASSER: Okay. RICO is, of
6 course, the Racketeering Influence Corrupt Organization
7 Law passed, I think, in the late 1960's, early
8 seventies.

9 When a plaintiff files a RICO
10 pleading, the defense attorneys scan it very carefully
11 and look for any basis to have it dismissed on the
12 pleadings before any depositions are taken or before
13 any discovery takes place.

14 What happened in each of my three
15 cases is that the motion was filed under Rule 12(b)6,
16 which allows for dismissal for failure to state a
17 claim. What the judge does there, he examines the
18 Complaint and determines whether the allegations are
19 sufficient under the Federal law to state a claim.

20 SAMUEL LASSER: And, you know, one
21 of the most difficult parts of filing this type of
22 lawsuit is making it past a defense motion to dismiss
23 the pleading, is that a fair statement?

4 MARSHALL LASSER: Certainly.

25 SAMUEL LASSER: Do you find that the

1 courts are receptive to these types of lawsuits, or do
2 you have the inkling that they want to side with the
3 defense? Do you have any position on that?

4 MARSHALL LASSER: In the three
5 attempts that I had here in the U.S. District Court of
6 Michigan, two cases were handled by one district judge
7 and the third by a second district judge, and in every
8 case they were dismissed on the pleadings.

9 Actually, the Judge is required to
10 dismiss on the pleadings, because I seeking to overturn
11 a precedent, a 6th Circuit precedent. Detroit,
12 Michigan is within the United States, within the
13 jurisdiction, the United States Court of Appeals for
14 the 6th circuit, which includes Michigan, Ohio,
15 Tennessee, and Kentucky.

16 So the district judge was required,
17 in fact, to dismiss the case under this precedent. But
18 nevertheless, the three district Judges, or two
19 district judges, handling these three cases were
20 hostile to the case; they were really, intensely
21 skeptical of the idea that a defense IME doctor could
22 be committing fraud, let alone widespread fraud, which
23 is what I do believe happens. So there was definitely
24 hostility, I believe. Maybe hostility is too strong of
25 a word, but real strong skepticism on the part of the

1 U.S. District Court judges.

2 SAMUEL LASSER: I want to talk about
3 how you got to this most recent decision on your
4 victory in the 6th Circuit Court appeals, the decision
5 that came down October 23rd of 2008, in which the Court
6 of Appeals, you know, reversed the District Court
7 decision and allowed you to proceed with your claims
8 and get to the discovery stage of litigation.

9 Where has this case been the courts
10 to get it to this point?

11 MARSHALL LASSER: Okay. This case
12 involves, the defendants are -- let me explain the
13 parties.

14 There are six plaintiffs, six truck
15 drivers as plaintiffs, and there are three defendants.
16 The truck drivers are employed by Cassens Trucking.
17 Workers comp claims for Cassens Trucking are adjusted
18 by Crawford & Company. And in the case for several of
19 the plaintiffs, if the person is injured on-the-job he
20 goes to -- was sent to, back at that time, to a Dr.
21 Saul Margules. I believed that the six plaintiffs,
22 some of them were fraudulently denied workers comp on
23 the basis of false Notices of Dispute. And a couple of
24 the cases, I believe, Dr. Saul Margules fraudulently --
25 wrote fraudulent reports, which needed to be followed

1 up by Notices of Dispute relying on those medical
2 reports. That's what I alleged. This is 2004, I
3 believe.

4 Anyway, the defense, of course,
5 makes it motion under Rule 12(b)6 to dismiss for
6 failure to state a claim and the district judge grants
7 the motion on, really, about 5 or 6 different grounds.
8 Not only the ground that there was a precedent that
9 required a misrepresentation for plaintiff on which it
10 relied, but several other grounds.

11 For example, he claimed -- you will
12 hear more about this later -- defendants claimed that
13 the case should have been preempted under something
14 called the McCarran-Ferguson reverse preemption, it's
15 a -- this is getting a little complicated, but the
16 insurance industry in the United States is basically
17 exempt from antitrust. Amazing, isn't it?

18 There is a law called the
19 McCarran-Ferguson Act that passed many decades ago
20 which exempts the insurance industry from antitrust,
21 and the corollary to that has been what is called the
22 McCarran-Ferguson reverse preemption, meaning that if a
23 case is brought under State law and the insurance
24 industry says: Well, wait a second, this impacts
25 the -- excuse me, if the case is brought under the

1 Federal law, such as RICO, the insurance industry can
2 try to get that case dismissed, or the defendant can
3 try to get the case dismissed on the ground that it is
4 reverse preempted by the McCarran-Ferguson Act, which
5 gives the States sole jurisdiction over regulation of
6 insurance.

7 SAMUEL LASSER: And so that was one
8 of the hurdles to overcome whether, in fact, your RICO
9 claim was preempted under this Federal Act, and the
10 Court of Appeals said it wasn't.

11 MARSHALL LASSER: Correct.

12 SAMUEL LASSER: This case, Brown v.
13 Cassens, the one that was published at the end of
14 October, it had been dismissed in the district court
15 and after that it was -- the Court of Appeals affirmed
16 that dismissal, am I correct?

17 MARSHALL LASSER: Correct. 2 to 1.

18 SAMUEL LASSER: And then you
19 appealed to the United States Supreme Court, and then
20 what happened after that?

21 MARSHALL LASSER: Well, my appeal to
22 the district court -- to the Court of Appeals, I asked
23 the Court of Appeals to overturn this 1984 precedent,
24 precedent which the Court of Appeals had ruled that a
25 civil RICO claim requires a plaintiff to allege a

1 misrepresentation made to him upon which relied. By
2 example, let's say I offer to sell you the Brooklyn
3 Bridge. You say sure, heres 10,000 bucks. Then I skip
4 town. You have relied upon my misrepresentation that I
5 owned the Brooklyn Bridge. The old precedent from the
6 Court of Appeals said that there had to be
7 misrepresentation to the plaintiff upon which we
8 relied. My appeal to the U.S. Supreme Court and to the
9 Court of Appeals was that, no, this is not what the
10 RICO law says.

11 So when the first appeal to the U.S.
12 Court of Appeals was heard, I think it was 2006/2005.
13 The Court of Appeals, 2 to 1, affirmed their old
14 precedent. I then applied for a rehearing on bank,
15 which means that you are asking all of the Judges of
16 the 6th Circuit Court to rehear it. They refused. I
17 filed a Petition for Certiorari, that's the name of an
18 appeal to the U.S. Supreme Court, and somebody --
19 another person somewhere in the United States on
20 another case was -- also appealed on another case two
21 weeks before me and about -- I think it was June, June
22 of this year, yes, June of this year, the U.S. Supreme
23 Court heard this other case, vacated that old precedent
24 of the 6th circuit and ruled that a plaintiff does not
25 have to allege a misrepresentation, made to have upon

1 which he relied. Plaintiff only has to allege
2 fraudulent scheme, which the mails or the wires were
3 used to further of this scheme.

4 So the case then went back down to
5 the United States Court of Appeals for the 6th circuit
6 for decision on the remaining issue. The remaining
7 issue was whether or not the McCarran-Ferguson Act
8 reversed preempted my claim against the Cassens and
9 Crawford & Company. The 6th Circuit Court said it did
10 not, that the Worker's Comp Act was not an act of
11 insurance, and et cetera, et cetera. That decision on
12 October 23rd, last month, clears the way for me to
13 proceed full force, unless -- and here is the fly on
14 the ointment. The Defendant on Friday -- I just
15 received yesterday, in fact, a motion for hearing on
16 bank by the defendants to try to get the entire 6th
17 circuit to reverse the decision of October 23. I don't
18 believe that it will be reversed. If it does, then I
19 have got real problems. If it doesn't, then we go back
20 down for full blast discovery against defendants in
21 this case. And then I am, frankly, going to file other
22 cases because this is a big problem, and I want to
23 attack it wherever it has occurred.

24 SAMUEL LASSER: I definitely want to
25 talk about that. So as it stands right now with the

1 most recent decision from the Court of Appeals, you've
2 gotten through the first hurdle? Essentially, the door
3 is open for your lawsuit to proceed into the discovery
4 stage? Is that fair to say?

5 MARSHALL LASSER: Barring motion
6 reconsideration on bank and reversal of the opinion on
7 October 23rd, that is correct.

8 SAMUEL LASSER: Now let's talk about
9 what the discovery involves.

10 You know, the discovery stages, all
11 the fact gathering that goes on in the case -- and
12 under RICO, I understand there is special discovery
13 rules that give a plaintiff a little more power, a
14 little more fact gathering power, than in a normal
15 civil suit. Can you explain on that a little bit?

16 MARSHALL LASSER: Yes, there are
17 several elements where RICO is a very powerful tool.
18 One is that I will be able to discover -- I will be
19 able to investigate all workers' compensation claims
20 handled by the defendants in a relevant period. Not
21 just the six that are -- that I have pled, because I
22 can look for what are called predicate acts or acts of
23 racketeering by the defendants that involve other
24 workers. And they are not going to like that, but that
25 is really going to be powerful. I may be able to cover

1 other claims, these people might become plaintiff and
2 even they don't become plaintiffs, well that's proof
3 that there is a pattern of racketeering.

4 Second, of course, I will be able to
5 get, of course, all correspondence and e-mails among
6 the defendant's and, third, request the discovery of
7 all correspondence and e-mails between the defendants
8 and their attorneys, their workers comp attorneys, and
9 ask that court to examine what they call an in camera
10 inspection of those e-mails, correspondence, and see if
11 any of them were in furtherance of the fraud, and
12 that's a huge thing.

13 SAMUEL LASSER: That's one thing I
14 want to talk about.

15 Communications between attorneys and
16 their clients are, in almost the entire legal world,
17 are privileged and the other side in a lawsuit is not
18 able to discover what their communications are and the
19 contents of their communications between the other
20 side's attorney and their client.

21 Under RICO, as you explained it and
22 as I understand it, you are allowed to look at
23 communications between the insurance companies,
24 attorneys and the doctors, the Medical Examiner's. Is
25 that right?

1 MARSHALL LASSER: Well, not quite
2 like that. The law is not Crystal clear, but there is
3 laws saying that I can request an in camera can't
4 inspection by the Court, not by me, of that email and
5 that correspondence to see if any of that was in
6 furtherance of the fraud.

7 For example, if the workers comp
8 attorneys were directing to use doctor A or doctor B,
9 or explaining to the claim adjuster what to put in the
10 false Notice of Dispute, that would certainly be
11 discoverable by the Court and that would be turned over
12 to me.

13 SAMUEL LASSER: I want to sort of
14 switch gears and talk about, you know -- sort of tell
15 the viewers, you know, injured workers, or whoever they
16 may be watching the show.

17 What would you tell them, a working
18 individual, or someone who's injured on-the-job, how
19 would you explain to them the significance of this
20 lawsuit and what it really means to injured workers
21 around the country, not just in Michigan?

22 MARSHALL LASSER: Well, I am not
23 sure what it means in other states, because I am not
24 sure what the laws are in other states.

25 For example, I don't know if the

1 laws of other states provide some remedy for fraudulent
2 use of IME doctors, or fraud brought by the IME
3 doctors, or fraudulent denial of workers comp by a
4 claim adjuster.

5 Say laws provide a remedy, that is
6 certainly feasible to consider that, you know, RICO
7 would provide a remedy. I think that this is a
8 template that could be used in nationwide if the
9 evidence is there.

10 SAMUEL LASSER: But, of course --

11 MARSHALL LASSER: But, of course,
12 what is the proof for fraud? That raises a very
13 interesting question. How do I prove that a doctor who
14 does 1,200 IME's a year for the insurance company is
15 committing fraud in 100, 200, or 500 of them? That's a
16 very interesting question, which is yet to be resolved.

17 SAMUEL LASSER: Could you explain,
18 giving a few examples on practice of what your
19 experience is with these defense medical examining
20 doctors, and what you've heard them say in deposition
21 as far as what they do for the defense and how they are
22 retained, and how much money they earn and how biased
23 they are, in your experience?

24 MARSHALL LASSER: You asked a whole
25 bunch of things there. Let me talk about money.

1 One doctor, in particular, that is
2 overused here Southeast Michigan is an orthopedic
3 doctor whose records indicate that he makes about
4 \$600,000 a year doing these IME and related
5 depositions. Roughly a 1,100 exams a year, just for
6 this one entity that hires him. We have an entity that
7 has a stable of these doctors. This doctor works for
8 this one entity. So I know this guy makes at least
9 600,000 a year.

10 SAMUEL LASSER: Solely from
11 performing these medical exams on behalf of the
12 insurance company?

13 MARSHALL LASSER: Right, and related
14 depositions.

15 SAMUEL LASSER: And depositions.

16 MARSHALL LASSER: Related
17 depositions. Now what he has said -- my experience is
18 that this doctor has never filed a person to have a
19 work-related disability -- or with extraordinary
20 rarity, extraordinary rarity. He will also testify --
21 excuse me, he will also testify that the job involving
22 repeated lifting, bending, twisting, kneeling,
23 squatting, climbing, heavy lifting does not aggravate
24 the pathology of arthritis of the knee, which I believe
25 is so far from medical truth that no doctor can

1 reasonably hold that opinion.

2 In other words, it's a fraudulent
3 opinion, in my belief, because the evidence of
4 orthopedic medicine is so clear that repetitive heavy
5 lifting, bending, squatting, kneeling and climbing will
6 contribute to the enhanced progression pathology of
7 osteoarthritis of the knee, for example. The doctor
8 also -- or some doctors, I am not going to say who,
9 because I am not going to let the cat out of the bag
10 yet. They simply lie in their reports and they say I
11 palpated the patient, or I put him through a full range
12 of motion. I've had several patients tell me that, no,
13 he didn't do that, he didn't even touch me at all. He
14 didn't touch my arms. You know, 1 or 2 people may say
15 that, very skeptical, but earlier today -- this is
16 really quite interesting. Just about 5 or 6 hours ago
17 I talked to a person who was examined by this
18 particular doctor, and that person brought her
19 chiropractor into the room with her. Doctor X, who did
20 the exam didn't know the man was a chiropractor,
21 apparently he assumed he was her husband. When doctor
22 X's report came out and said that he examined this
23 person's spine. The chiropractor wrote a report saying
24 no, he didn't. I was there, I saw it, he didn't
25 examine the spine. Now that to me is just an out and

1 out fundamental lying. And that is going to be -- I
2 think is going to help make a prima facia case,
3 that's one of the -- so in other words, you have false
4 statements in the reports.

5 Simple things like that. I
6 examined -- the doctor says I examined this, when he
7 didn't. I touched this, when he didn't. The patient
8 gave me this history and the patient said I have never
9 gave that history. Or the doctor may say the patient
10 never disclosed a prior injury and the patient says
11 bologna, I told him about my prior injury. Those are
12 questions of fact for a jury, but -- and I will be
13 happy to put my clients in front of a jury and line up
14 20, 30, or 40 of them all saying that Doctor X said
15 this lie, Doctor X said that lie, and here is Doctor X
16 having to rebut each lie. That's going to make a great
17 trial.

18 SAMUEL LASSER: Now one of the
19 questions is, you have, you know, several clients who
20 you are representing in these lawsuits. Do you think
21 this problem is more widespread throughout Michigan, or
22 throughout the entire country?

23 MARSHALL LASSER: I can't speak for
24 the entire country, but I sure as heck know it's
25 widespread through Michigan, from my experience. For

1 example -- here's another example:

2 On Tuesday this past week I was at
3 the deposition, by telephone, of a Dr. James Wessinger
4 of Lansing or Okemos, Michigan. As is the case with
5 too many of these doctors, he is retired from the
6 practice of medicine 11 years ago. He has not done
7 surgery in 11 years. And he admitted that his -- he
8 does -- that he earns between roughly \$650,000 dollars
9 and \$900,000 a year doing these IME's for the last 11
10 years off of the insurance companies. To me, that is
11 an absolute outrage that a man should be able to make
12 this kind of money, not practicing medicine, just doing
13 IME's from insurance companies. He can't be sued, he
14 can't be touched under State law, no matter what he
15 says.

16 It is lies, but there is lots and
17 lots of retired doctors who are making \$200,000 and
18 300,000, \$400,000 a year in Michigan, just doing these
19 IME's for insurance companies.

20 SAMUEL LASSER: I have to imagine
21 that that problem is solely -- is not solely contained
22 in Michigan. I would have to imagine that the same
23 thing goes on in California, the same things goes on in
24 Nevada, the same things goes on in every state in this
25 country that has a workers' compensation system.

1 MARSHALL LASSER: That's probably
2 the reasonable surmise.

3 SAMUEL LASSER: You know, one of the
4 arguments I anticipate from the defense side is how can
5 you prove that these doctors are really acting
6 fraudulently? How can you prove it's not just a
7 reasonable difference of, you know, differing medical
8 opinion from your doctors to their doctors?

9 MARSHALL LASSER: Excellent
10 question. Excellent question, and something I have
11 given a lot of pondering to.

12 One method is, and I think it is
13 going to be very, very powerful, is when you have a
14 client who says Doctor X wrote in his report that I
15 palpated the back and the client says, no, he didn't,
16 he didn't touch my back. You know, he lifted up my
17 shirt and looked at it, he didn't touch my back. Or
18 another client says: He denies that I told him about
19 my earlier knee injury, and that is bologna, I told him
20 about my earlier knee injury. Those right there are
21 questions of fact, and if you can line up 20 or 30 of
22 clients who truthfully and persuasively will tell a
23 jury that Doctor X lied; that is going to call into
24 question every single IME report he wrote.

25 Now the question is, of course, can

1 they all be over turned? I don't know. I mean, I
2 really have got to think this through as to exactly
3 what proof is required.

4 So one element -- one type of
5 evidence, which I think is very powerful, is that
6 client who can truthfully, persuasively tell the jury
7 that Doctor X's report contains lie -- this lie, that
8 lie, et cetera.

9 Another way is when he gives -- is
10 to have an orthopedic doctor to look at Doctor X's
11 report, and then look at all the medical records. Then
12 Doctor X says the person can return to work without
13 restriction. When you have a neutral orthopedic
14 surgeon looking at all of the records and saying that's
15 unconscionable. I mean no -- this is not a matter of
16 reasonable difference of opinion. This is fraud. This
17 person who is just eight weeks post arthrodesis of his
18 ankle cannot possibly return to unrestricted manual
19 labor. It is not within a reasonable difference of
20 opinion. That would be another grounds for saying a
21 particular medical report is fraudulent.

22 A third ground would be to take a
23 position, as I described earlier, which is contrary to
24 medical knowledge, such as a position that some doctors
25 take and that repetitive heavy lifting, climbing,

1 twisting, bending, and squatting will not cause
2 progression of osteoarthritis when, in fact, it is
3 known that it will, certainly for the knee and other
4 joints, also.

5 So those are just three -- oh, and
6 the fourth is the physical approach, and that will be
7 fun.

8 One particular -- if you take these
9 doctors, the Doctor's that are making 600,000, 700000,
10 and 800,000 a year and you line up all their reports,
11 let's say 200 in a row. If you find that 97 percent of
12 them find no work-related disability and on the other
13 side you have, let's say, 200 consecutive reports, you
14 might have 60, 80 or 90 different orthopedic physicians
15 on the other side and they all say there is a work
16 related disability, that is some further evidence that
17 Doctor X is committing fraud. It's not merely a
18 difference of opinion, it's such an oceanic difference
19 of opinion that it is fraud. Maybe a statistician will
20 come into play there. I may be hiring a statistician,
21 I am not sure. So those are four points there that I
22 am considering.

23 SAMUEL LASSER: When it comes to
24 proving your case and accumulating all this evidence,
25 whether it be statistics or having independent, neutral

1 doctors review these files to make a determination on
2 an individual case, you, yourself, will have to go out
3 and find someone willing to help you, and someone --
4 some doctor, who is willing to work on your behalf and
5 help you uncover this fraud. Now is that a problem?

6 MARSHALL LASSER: Yes. You are darn
7 right that is a problem, because the medical
8 profession -- there aren't many brave people in the
9 medical profession, I have found. They don't want to
10 stick their nose out.

11 I am looking for orthopods who will
12 be willing to go against Doctor X, or Doctor Y or
13 Doctor Z, or at least take a look at his reports,
14 medial reports, and compare them to the medical
15 records, or the treaters medical records and give me an
16 opinion as to whether Doctor X, Y, or Z, or the
17 treaters' medical records, and give me an opinion as to
18 whether Doctor X, Y, or Z's opinions are fraudulent or
19 are so far from any reasonable medical opinion that
20 they are false.

21 I was heartened when on Thursday
22 afternoon, two days ago, I did take the deposition of
23 an orthopedic surgeon, in my case I was the one -- the
24 person who took the deposition. This doctor, who gets
25 zero percent of his income doing IME's, is so upset in

1 what he sees being done by these IME doctors that he
2 said he would help me in some of my cases. Now that's
3 great because this doctor -- great for my clients whose
4 problems involve the spine, because he is a spine
5 specialist. Now I need an orthopedic doctor who was
6 going to do knees and ankles.

7 SAMUEL LASSER: And are you looking
8 for -- are you contacting doctors only in Michigan?
9 Are you looking around the country? Where do you think
10 you will be able to find people to help you out?

11 MARSHALL LASSER: I am looking
12 anywhere. I am even looking for a doctor who is a PM&R
13 doctor, that's what we call physical medicine and
14 rehabilitation, also known as a physiatrists. I
15 believe they are also quite capable of testifying
16 regarding knees, medicine -- I am not -- yes, I would
17 say so. So I am looking at those two specialties,
18 anywhere I can find them.

19 SAMUEL LASSER: What response have
20 you gotten from clients? I know you work a lot with
21 union members, with teamsters, with Locals. What sort
22 of feedback have you gotten on this case?

23 MARSHALL LASSER: These people are
24 thrilled. People are actually thrilled and proud of
25 me. They know there's a lot of people hurt; badly,

1 badly hurt by these claim adjusters and their IME
2 doctors, claim adjusters. I have got a lot of
3 atta-A-boy's.

4 SAMUEL LASSER: Now what would you
5 tell, and I know speak -- you go and speak with various
6 unions. What would you tell them -- what would you
7 tell someone who believes they were fraudulently cut
8 off benefits and doesn't really know what to do? You
9 know, they don't know if they should hire an attorney,
10 and there is no formal appeals process through in the
11 workers comp system for that. What are these people
12 supposed to do?

13 MARSHALL LASSER: Well, they will
14 have an attorney for the workers comp case. Once they
15 have been cutoff to, let's say, due to the dispute or
16 pursuant to an IME, they will pursue that. But they
17 can contact me to see if there is a possibility of a
18 RICO case. I certainly looked into a number of cases
19 against a number of corporations and a number of
20 doctors.

21 SAMUEL LASSER: What do you think,
22 you know, talking about the future here and the impact
23 of this case and the impact this case could potentially
24 have on the insurance system or, you know, more of
25 these suits in the future. Do you have any idea where

1 it's going, or are you just taking it development by
2 development?

3 MARSHALL LASSER: Well, I mean,
4 defendants are going to have to pay a lot of money
5 before they get scared enough to change their
6 practices. So, hopefully, there is going to be a lot
7 of money changing hands and then they will see that
8 they are going to have to stop using, you know, IME
9 doctors who are making 300,000, \$400,000, \$500,000,
10 \$600,000 a year. Maybe special legislation has to be
11 passed, a legislation has to be passed to have a number
12 of doctors who do not have financial ties to either
13 side, who will do IME's. You have got to get rid of
14 the system where a man can make \$300,000, \$400,000,
15 \$500,000, \$600,000 a year doing IME's for insurance
16 companies, or for the Plaintiff's for that matter,
17 because of the fantastic bias it involves, and the
18 fraud it encourages. I hope that's what the result is.

19 SAMUEL LASSER: Do you get the sense
20 that workers comp, you know, Judges, or magistrates in
21 Michigan, and maybe the courts at the state level also
22 are sort of apathetic to the situation?

23 MARSHALL LASSER: Very good
24 question. I have been really bitterly disappointed by
25 the lack of interest the workers' compensation

1 magistrates have shown in the -- in my getting and
2 trying to put into evidence, financial records of these
3 IME doctors. It's like they don't care about it, they
4 don't think it has any impact, which it blows my mind.
5 I mean, if a doctor is retired and he is making 300,000
6 or \$500,000 dollar a year, or in the case of this Dr.
7 Wessinger, \$800,000 a year, doing IME's just for
8 insurance companies, to me it completely destroys the
9 credibility of his testimony.

10 And yet, I believe that most of the
11 magistrates here, they won't even let me discover -- or
12 my colleagues, they won't even let us discover that
13 information. And if we discover it, they don't seem
14 to -- I've never -- never, ever seen an opinion by a
15 Magistrate or the appellate people -- here in Michigan
16 they are called the Workers Comp Appellate Commission,
17 never seen an opinion saying this doctor lacks
18 credibility because of the enormous amount of money he
19 is making doing this. That just defies common sense,
20 and is really disappointing.

21 SAMUEL LASSER: Do you get the sense
22 that it's -- they turn a blind eye to it, or they don't
23 care or --

24 MARSHALL LASSER: That's what I am
25 saying.

1 SAMUEL LASSER: They turn a blind
2 eye to it?

3 MARSHALL LASSER: Yes, they don't
4 care. They don't -- they don't care.

5 SAMUEL LASSER: The only way to
6 bring this -- bring this system to light, the broken
7 system to light, you felt, was to pursue a RICO claim
8 in Federal Court?

9 MARSHALL LASSER: That's the only
10 thing -- yeah, that's the only thing I have found that
11 seems to have a hope of worth of fixing the system.

12 SAMUEL LASSER: Do you feel that the
13 insurance companies -- obviously, you know, you feel
14 that the law is on their side in Michigan and they
15 control the courts in the sense of the laws being in
16 their favor when it comes to denying benefits?

17 MARSHALL LASSER: I wouldn't put it
18 that strongly. I would say that the -- I don't say
19 they control the courts, I don't say that by any means.
20 But I do say that there is a serious flaw in the
21 Michigan scheme, in that there is no punishment for
22 fraud, nor any -- no punishment or deterrent for fraud,
23 and it allows the insurance companies, or any side, to
24 use doctors who are making 300,000, 400,000, 500,000
25 thousand a year doing IME's for one side.

1 SAMUEL LASSER: Do you -- let me see
2 here.

3 Do you know what the other circuits
4 around this country has held as far as any of these
5 claims? Has there been similar decisions in other
6 circuits?

7 MARSHALL LASSER: Not to my
8 knowledge.

9 SAMUEL LASSER: Not to your
10 knowledge.

11 Have any other attorneys approached
12 you about this and -- you know, from other states or
13 organizations from other states?

14 MARSHALL LASSER: The first
15 organization was the National Organization of Injured
16 Workers. I have also heard from a couple other
17 attorneys out of state and instate.

18 SAMUEL LASSER: As far as you know,
19 has anyone told you, you know, I've been working on --
20 I've been thinking about bringing a suit like this in
21 the past and never knew how to go about it? Are they
22 asking you for insight as to how to pursue it in
23 another district, another state, in another circuit?

24 MARSHALL LASSER: I have not been
25 asked yet.

1 SAMUEL LASSER: Would the -- and the
2 Supreme Court has never decided an issue like this, as
3 far as you know?

4 MARSHALL LASSER: Well --

5 SAMUEL LASSER: The United States
6 Supreme Court has never really addressed workers'
7 compensation denial of benefits?

8 MARSHALL LASSER: Not on RICO, no it
9 has not.

10 SAMUEL LASSER: In the RICO context.

11 MARSHALL LASSER: No.

12 SAMUEL LASSER: You have been doing
13 this, you know, obviously for a long time. And why did
14 you wait? Why do you feel that right now is the time
15 to do this, as opposed to decades ago?

16 MARSHALL LASSER: Well, heck. I
17 mean, I wasn't even -- just frankly, it never occurred
18 to me until about five years ago that there was this --
19 this possibility.

20 Also, I must say, that really it was
21 only about five or six years ago that I really became
22 outraged and this persistent -- what I see as
23 persistent fraud. Yeah. Yeah. So much of it.

24 SAMUEL LASSER: Do your clients
25 often tell you of other cases in which that I know of

1 that --

2 MARSHALL LASSER: Oh, yeah. I am
3 collecting data every day now. I am -- I am trying to
4 find as many names, talk to as many people -- I want to
5 build as big a arsenal of what I believe are false
6 IME's and fraudulent Notices of Dispute, because the
7 more you can show, the easier it will be to prove the
8 case.

9 SAMUEL LASSER: And do you think
10 that this is the type of case that will ultimately end
11 up in front of a jury, or have you had negotiations
12 with the defense side in this to resolve it?

13 MARSHALL LASSER: I just received
14 yesterday from the counsel for Cassens and Crawford &
15 Company, the motion for hearing on bank. If they lose
16 that, they would be, I think, idiots to fail to
17 seriously negotiate settlement, because the clock is
18 ticking on the attorney fees. You know, they are going
19 to have to pay not only their attorney fees, whatever
20 the \$300 or \$400 an hour they are paying, they are
21 going to have to pay me the same amount because my time
22 is certainly worth at least that much, if not more
23 because I won and it is going to cost them a lot of
24 money.

25 Plus they, of course, there is the

1 risk, and this is what the defendants all around the
2 country should be concerned about. When discovery --
3 discovery may disclose fraud, which may result in
4 indictments, because if I find fraud that is, I
5 believe, crystal clear, I'm going to hustle it over to
6 the Justice Department and perhaps under President
7 Obama, and in this economic climate, corporate fraud
8 and fraud by the doctors may, indeed, pique the
9 interest of the Justice Department.

10 So the defendants in this case and
11 other cases, they are going to have to decide do we
12 really want to have this attorney, and maybe the judge
13 would with in camera inspections rummaging around all
14 of the claims, correspondence and phone calls and
15 emails.

16 SAMUEL LASSER: On that note, I want
17 to wrap it up and I want to thank you very much for
18 joining us by phone today all the way from Michigan,
19 and congratulate you on your legal victories up until
20 now, and the fight that you are doing on behalf of
21 injured workers in Michigan, and hopefully this will
22 have a nationwide effect.

23 It's really good work, and I'm sure
24 your clients very much appreciate it, and I want to
25 commend you for that.

1 So thank you very much for joining
2 us and i hope to talk to you soon.

3 MARSHALL LASSER: I just want to say
4 thank you for your thoughtful questions. You asked a
5 lot of good questions.

6 SAMUEL LASSER: Thank you for your
7 thoughtful answers.

8 MARSHALL LASSER: Okay. Bye.

9 SAMUEL LASSER: Take care.

10 (End of broadcast)

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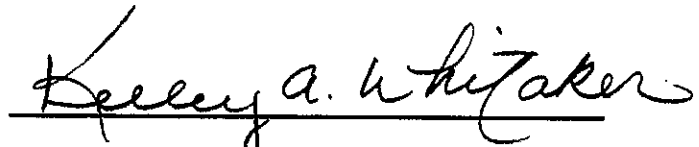
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Kelley A. Whitaker

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